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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JOSE TRUJILLO,

Plaintiff,

vs.

JESUS MARQUEZ dba TAQUERIA LOS
PRIMOS; RAMON MARQUEZ dba
TAQUERIA LOS PRIMOS; OLGA
MARQUEZ dba TAQUERIA LOS PRIMOS;
STEPHEN J. STANICH, individually and as
TRUSTEE UNDER THAT CERTAIN
STEPHEN J. STANICH TRUST
AGREEMENT dated August 12, 2022;

Defendants.

) No.

) **COMPLAINT ASSERTING DENIAL OF**
) **RIGHT OF ACCESS UNDER THE**
) **AMERICANS WITH DISABILITIES ACT**
) **FOR INJUNCTIVE RELIEF,**
) **DECLARATORY RELIEF, DAMAGES,**
) **ATTORNEYS' FEES AND COSTS (ADA**

I. SUMMARY

1. This is a civil rights action by plaintiff JOSE TRUJILLO ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Taqueria Los Primos
85 North B Street
San Mateo, California 94401
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against JESUS MARQUEZ dba TAQUERIA LOS PRIMOS; RAMON MARQUEZ dba TAQUERIA LOS PRIMOS; OLGA MARQUEZ dba TAQUERIA LOS PRIMOS; and STEPHEN J. STANICH, individually and as TRUSTEE UNDER THAT CERTAIN STEPHEN J. STANICH TRUST AGREEMENT dated August 12, 2022 (hereinafter collectively referred to as “Defendants”), pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) (“ADA”) and related California statutes.

II. JURISDICTION

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Northern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

IV. PARTIES

7. Defendants own, operate, and/or lease the Facility, and consist of a person (or persons), firm, and/or corporation.

8. Plaintiff is substantially limited in his ability to walk, and uses a wheelchair or cane for mobility. In addition, Plaintiff’s hearing is substantially limited. Consequently, Plaintiff is “physically disabled,” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

V. FACTS

9. The Facility is open to the public, intended for non-residential use, and its operation affects commerce. The Facility is therefore a public accommodation as defined by applicable state and federal laws.

1 10. Plaintiff is a California resident who travels to the area where the Facility is
2 located regularly for medical appointments and weekend trips with family. He visited the
3 Facility on or about July 21, 2022 to purchase lunch. During his visit to the Facility, Plaintiff
4 personally encountered barriers (both physical and intangible) that interfered with, if not
5 outright denied, Plaintiff's ability to use and enjoy the goods, services, privileges and
6 accommodations offered at the Facility. These barriers include, but are not necessarily limited
7 to, the following:

- 8 a) Plaintiff parked in the designated accessible parking stall in the
9 Facility's parking lot, which was improperly configured and lacked a
10 proper access aisle. It was difficult for Plaintiff to unload from his
11 vehicle into his wheelchair because of the lack of sufficient clear space
12 next to his vehicle. Additionally, the surface of the parking space was
13 uneven, with excessive slopes that caused Plaintiff's wheelchair to tilt
14 and move while he tried to get in and out.
- 15 b) The route of travel between Plaintiff's vehicle and the public sidewalk,
16 along the route to the Facility entrance, was cracked and uneven, with
17 excessive changes in level that were difficult for Plaintiff to maneuver
18 his wheelchair over.
- 19 c) The threshold at the Facility entrance was difficult for Plaintiff to wheel
20 over because there was damaged pavement adjacent to the threshold
21 which created a large change in level.
- 22 d) Plaintiff could not find any accessible tables and sat at the only available
23 table on the back patio. The table lacked sufficient knee and toe
24 clearances to accommodate Plaintiff's wheelchair. He could not pull his
25 wheelchair up close to the table and had to sit at an awkward angle and
26 distance while eating, which was difficult and uncomfortable. Plaintiff
27 did not see any other tables that would provide sufficient knee and toe
28 clearances to accommodate his wheelchair.

1 e) The transaction counter surface was high and there was no lower
2 auxiliary portion, which was hard for Plaintiff to reach over and made it
3 difficult to pay for his meal.

4 f) The exit door from the southern portion of the restaurant was located at
5 the bottom of a steep ramp, and it was difficult for Plaintiff to descend
6 safely and without excessive speed.

7 g) Plaintiff needed to use the restroom while at the Facility, but could not
8 reach it because the exterior walkway leading to the restroom was
9 excessively cross sloped.

10 11. There may exist other barriers at the Facility which relate to Plaintiff's
11 disabilities, and he will seek to amend this Complaint once such additional barriers are
12 identified as it is Plaintiff's intention to have all barriers which exist at the Facility and relate to
13 his disabilities removed to afford him full and equal access.

14 12. Plaintiff was, and continues to be, deterred from visiting the Facility because
15 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and
16 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.
17 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility
18 once the barriers are removed.

19 13. Defendants knew, or should have known, that these elements and areas of the
20 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to
21 the physically disabled. Moreover, Defendants have the financial resources to remove these
22 barriers from the Facility (without much difficulty or expense), and make the Facility
23 accessible to the physically disabled. To date, however, Defendants refuse to either remove
24 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

25 14. At all relevant times, Defendants have possessed and enjoyed sufficient control
26 and authority to modify the Facility to remove impediments to wheelchair access and to
27 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for
28 Accessible Design. Defendants have not removed such impediments and have not modified the

1 Facility to conform to accessibility standards. Defendants have intentionally maintained the
 2 Facility in its current condition and have intentionally refrained from altering the Facility so
 3 that it complies with the accessibility standards.

4 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is
 5 so obvious as to establish Defendants' discriminatory intent. On information and belief,
 6 Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere
 7 to relevant building standards; disregard for the building plans and permits issued for the
 8 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the
 9 Facility; decision not to remove barriers from the Facility; and allowance that Defendants'
 10 property continues to exist in its non-compliant state. Plaintiff further alleges, on information
 11 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the
 12 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

13 **VI. FIRST CLAIM**

14 **Americans with Disabilities Act of 1990**

15 Denial of "Full and Equal" Enjoyment and Use

16 16. Plaintiff re-pleads and incorporates by reference the allegations contained in
 17 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

18 17. Title III of the ADA holds as a "general rule" that no individual shall be
 19 discriminated against on the basis of disability in the full and equal enjoyment (or use) of
 20 goods, services, facilities, privileges, and accommodations offered by any person who owns,
 21 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

22 18. Defendants discriminated against Plaintiff by denying Plaintiff "full and equal
 23 enjoyment" and use of the goods, services, facilities, privileges and accommodations of the
 24 Facility during each visit and each incident of deterrence.

25 Failure to Remove Architectural Barriers in an Existing Facility

26 19. The ADA specifically prohibits failing to remove architectural barriers, which
 27 are structural in nature, in existing facilities where such removal is readily achievable. 42
 28 U.S.C. § 12182(b)(2)(A)(iv).

20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendants can easily remove the architectural barriers at the Facility without much difficulty or expense, that the cost of removing the architectural barriers does not exceed the benefits under the particular circumstances, and that Defendants violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Defendants to remove the Facility’s barriers, then Defendants violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendants violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.¹

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

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¹ Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 27. The ADA also requires that facilities altered in a manner that affects (or could
2 affect) its usability must be made readily accessible to individuals with disabilities to the
3 maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's
4 primary function also requires making the paths of travel, bathrooms, telephones, and drinking
5 fountains serving that area accessible to the maximum extent feasible. Id.

6 28. Here, Defendants altered the Facility in a manner that violated the ADA and
7 was not readily accessible to the physically disabled public – including Plaintiff – to the
8 maximum extent feasible.

9 Failure to Modify Existing Policies and Procedures

10 29. The ADA also requires reasonable modifications in policies, practices, or
11 procedures, when necessary to afford such goods, services, facilities, or accommodations to
12 individuals with disabilities, unless the entity can demonstrate that making such modifications
13 would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

14 30. Here, Defendants violated the ADA by failing to make reasonable modifications
15 in policies, practices, or procedures at the Facility, when these modifications were necessary to
16 afford (and would not fundamentally alter the nature of) these goods, services, facilities, or
17 accommodations.

18 Failure to Maintain Accessible Features

19 31. Defendants additionally violated the ADA by failing to maintain in operable
20 working condition those features of the Facility that are required to be readily accessible to and
21 usable by persons with disabilities.

22 32. Such failure by Defendants to maintain the Facility in an accessible condition
23 was not an isolated or temporary interruption in service or access due to maintenance or
24 repairs.

25 33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney
26 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

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VII. SECOND CLAIM

Unruh Act

34. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

35. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

36. California Civil Code § 51.5 also states, in part that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

37. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

38. Defendants' aforementioned acts and omissions denied the physically disabled public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

39. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory minimum damages of \$4,000 for each offense.

41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

VIII. THIRD CLAIM

Denial of Full and Equal Access to Public Facilities

42. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

43. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of

Government Code § 4450.

44. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

46. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Declaratory relief finding that Defendants violated the ADA.
4. Attorneys' fees, litigation expenses, and costs of suit.²
5. Interest at the legal rate from the date of the filing of this action.
6. For such other and further relief as the Court deems proper.

Dated: 2/15/2023

MOORE LAW FIRM, P.C.

/s/ Tanya E. Moore

Tanya E. Moore
Attorney for Plaintiff
Jose Trujillo

² This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

VERIFICATION

I, JOSE TRUJILLO, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: 2/15/2023

/s/ Jose Trujillo

Jose Trujillo

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore

Tanya E. Moore
Attorney for Plaintiff,
JOSE TRUJILLO